


<b>Cabinet</b>  22 <sup>nd</sup> September 2021	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Affordable Self-Build on Council Owned Land – Disposal and marketing of sites</b>	

<b>Lead Member</b>	<b>Councillor Danny Hassell, Cabinet Member for Housing</b> <b>Councillor Eve McQuillan, Cabinet Member for Planning and Social Inclusion</b>
<b>Originating Officer(s)</b>	Mariana Schiller (Self-Build and Co-Housing Project Manager) and Robin Sager (Regeneration Schemes Coordinator)
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Reason for Key Decision</b>	Significant impact on wards
<b>Forward Plan Notice Published</b>	14 <sup>th</sup> July 2021
<b>Strategic Plan Priority / Outcome</b>	1. People are aspirational, independent and have equal access to opportunities;  2. A borough that our residents are proud of and love to live in;

### **Executive Summary**

The Mayor has committed to support up to 50 self-build homes over the period 2018-2022. To facilitate this, officers have produced a Self-Build Policy and separate Guidance document. Both documents were subject to consultation with members of the Self-Build Forum and the wider public. The Self-Build Policy and Guidance as well as a list of proposed Council-owned sites for self-build were approved as an Executive Decision by the Mayor at Cabinet on 25th March 2020.

The first 2 self-builds sites (Christian Street and Lark Row) were advertised on the GLA Small Sites Portal inviting bids between January and April 2021. An assessment panel was assembled to score bids and select a preferred bidder for each site based on an assessment criteria that prioritised quality over cost. The panel included Council officers as well as officers from the GLA and Community Led Housing Hub (London). Officers are also working on advertising and disposing the next two sites in the programme (Pigott Street and Smythe Street) which will follow the same process undertaken for the first two sites. Finally, officers are also looking into adding more sites to the programme for future marketing and disposal.

## **Recommendations:**

The Cabinet is recommended to:

1. Approve disposal of Christian Street and Lark Row to preferred bidders selected by assessment panel, on a 250-year lease in accordance with the previously approved Self-Build Policy and Guidance.
2. Approve marketing and disposal of Pigott Street and Smythe Street under the Self-Build Programme, in accordance with the process undertaken for Christian Street and Lark Row.
3. Note that more sites will be added to the Self-Build Programme. Should suitable sites be identified, Cabinet will be asked to approve the inclusion of these into the programme.
4. Delegate authority to the Corporate Director of Place to market and dispose of any future sites added to the Self-Build programme in line with the process set out in this report once Cabinet has approved inclusion of any site into the Self-Build Programme.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The Self-Build Policy and Guidance were approved by Cabinet in March 2020, along with a list of Council-owned sites to be disposed for affordable self-build (Appendices 1, 2 and 3). These were developed to respond to the Mayor's election manifesto pledge to support up to 50 self-build homes during the period 2018-2022.
- 1.2 For the first two sites made available for bidding on the GLA Small Sites Portal (Christian Street and Lark Row) a total of 19 bids were received – 6 for Christian Street and 13 for Lark Row. These proposed different design principles, governance and management arrangements and number of affordable homes being delivered, but most of the bids were of high quality and in line with the Assessment Criteria and Guide to Bidders (Appendices 4 and 5). An expert panel formed by Council officers as well as officers from the GLA and Community Led Housing Hub (London) was formed to score the bids and shortlist preferred bidders for each site. Following clarifications with bidders and due diligence checks, a preferred bidder for each site will be confirmed by the assessment panel.
- 1.3 It is now key to agree disposal of these two sites to the preferred bidders selected by the panel in order to deliver on the Mayor's commitment. As established by the adopted Self-Build Policy and Guidance, the affordability of schemes will be maintained in perpetuity through a S106 agreement applied to the planning consent that will prescribe the permitted use of the

land for self-build only; apply resale price caps to the sale of the homes; and require clear allocation policies for initial and future sale or letting of self-build homes. Example S106 clauses can be found at Appendix 6.

- 1.4 Cabinet is also asked to approve marketing and disposal of the next two sites in the programme (Pigott Street and Smythe Street). They will be marketed on the GLA Small Sites Portal and bids will be assessed by an assessment panel, following the same process undertaken for Christian Street and Lark Row. Affordability of schemes will also be maintained in perpetuity through a S106 agreement, in line with the adopted Self-Build Policy and Guidance.
- 1.5 Finally, Cabinet is asked to note that officers will look into adding more sites into the programme. Should suitable sites be identified, Cabinet will be asked to approve the inclusion of these into the programme. Cabinet is also asked to approve delegated authority to the Corporate Director of Place to follow the same process that is proposed for Pigott Street and Smythe Street once future Council-owned sites are approved for self-build by Cabinet. As the Council's Self-Build Programme becomes more established and delivers on the Mayor's commitment, it is recommended approval for following the same process for future sites added to the programme in order to streamline the process. The marketing of sites will follow a process that has already shown itself to be reliable and robust given the high levels of interest for the first two sites in the programme and the fact that sites are marketed with clear, standardised contractual terms which have been developed specifically for the programme. These provide a proportionate level of control, with simplicity and efficiency in mind. This is exemplified by the standard long leasehold subject to planning. The process of scoring bids following a clear assessment criteria, which favours quality over cost, and is conducted by an experienced assessment panel has also shown itself to be reliable and robust.

## **2 ALTERNATIVE OPTIONS**

- 2.1 Not agreeing disposal of Christian Street and Lark Row to preferred bidders may result in failure to deliver on the Mayoral commitment on self-build housing and disaffect the self-build community in the borough, particularly the groups involved in developing bids. Potentially, there could also be a breach of statutory duty in relation to the provisions of the Housing and Planning Act 2016 and the Self-build and Custom Housebuilding Act 2015.
- 2.2 Not agreeing marketing and disposal of the next two sites (Pigott Street and Smythe Street) may lead to the same consequences outlined above.
- 2.3 Not noting that more sites will be added to the programme or agreeing delegated authority to follow the same process that is proposed for Pigott Street and Smythe Street for any future Council-owned sites that are added to the Self-Build Programme may, in addition to the same

consequences outlined above, also lead to delays in progressing the programme and, as a consequence, future selected bidders missing the deadline for securing GLA grants through the London Community Housing Fund.

- 2.4 An alternative option considered was for the Council to enter into a shared equity arrangement with the self-builder with the Council providing an additional “affordability discount” (of between 20% to 50%) by way of a retained equity stake. The comments provided by the Chief Finance Officer at the pre-consultation stage for the March 2020 Cabinet report did not recommend this option.
- 2.5 Consideration was given to alternative routes of financing of schemes should bidders fail to access GLA grants due to missing the deadline. Although schemes can also be financed through loans, mortgages and personal savings/equity, it is considered that having the option to access GLA grants is crucial to ensuring that the programme is inclusive and prioritises affordability, particularly for those individuals and groups that would find it challenging to finance their projects otherwise.

### **3 DETAILS OF THE REPORT**

#### **Background**

- 3.1 Following approval by Cabinet for the Self-Build Policy and Guidance and list of proposed sites for self-build in March 2020, officers proceeded with advertising the two first sites (Christian Street and Lark Row) on the GLA Small Sites Portal, the details of which are described below. Officers are also working on advertising and disposing the next two sites in the programme (Pigott Street and Smythe Street) by following the same process, and looking into adding more sites to the programme for future marketing and disposal.

#### **Christian Street and Lark Row**

##### **Marketing and assessment of bids**

- 3.2 Following site due-diligence work and the preparation of information packs, Christian Street and Lark Row were offered on the GLA Small Sites Portal. The bidding process was open from 29th January to 16th April 2021 (a total of 11 weeks). Included in the pack available to bidders on the portal were site particulars (Appendices 3a and 3b), Assessment Criteria (Appendix 4), Guide to Bidders (Appendix 5), S106 example clauses (Appendix 6) and Draft Lease (Appendix 7). Bidders also had access to technical information about the sites including planning statements, topographical, archaeological and geotechnical surveys as well as a tree survey and ecology report. During the bidding process, 1:1 meetings were offered to groups and individuals that were interested in bidding for the sites. There were also telephone discussions and email exchanges where clarifications were sought. A notice of intended disposal of Open Space land for the Lark Row site was published on the Docklands & East London Advertiser with contact details for any queries

and/or objections to be sent to.

- 3.3 Due to its limited size, Christian Street was open to bids from individuals and groups whereas Lark Row was only open to bids from groups. A total of 13 bids were received for Lark Row and 6 bids for Christian Street.
- 3.4 Once bidding was closed, the GLA transferred all files received to the Council. An assessment panel was formed to score the bids, including Council officers with expertise in design, social value, finance and governance. Officers from the Community Led Housing Hub (London) and the GLA were also included in the panel. In total, the panel had 5 members. The Assessment Criteria prioritised quality (80%) over cost and finance (20%). Within quality there were a number of criteria including bidders' local connection, governance (for group bids) and management for the scheme, community benefit (including affordability of units), design, value for money and deliverability. Cost included both the receipt offer for the site as well as bidders' financial models.
- 3.5 To ensure a balanced and fair decision, each criteria was assessed by at least two panel members. Once all scores had been submitted, the panel met to moderate and agree final scores. An initial shortlist for each site was drawn up and officers undertook clarifications with shortlisted bidders before they were confirmed, and due diligence checks commenced. These include checking whether household income is within the upper income cap for Shared Ownership in London (currently £90,000 per household) to comply with the affordability element of the programme.
- 3.6 The panel verified that the three highest bids for each site were high-quality, deliverable schemes that would deliver value for money and affordability so as to ensure that should the first bidders for each site fail any of the diligence checks or withdraw their bid, the panel may award sites to the second or third highest bidders.

#### Site disposal

- 3.7 The disposal process follows the following procedures: The assessment panel is responsible for selecting preferred bidders for each site and for undertaking eligibility checks. Cabinet is asked to agree disposal of the sites to the bidders selected and confirmed as preferred by the panel, as the latter has responsibility for ensuring that selected bids present the best offer in relation to the Self-Build Programme's strategic aims such as affordability of units, and that they have scored highest regarding the Assessment Criteria (Appendix 4).
- 3.8 Site disposal will be by way of a granting a long lease (250 years) with a reversionary interest to the Council. The disposals are subject to planning permission and the availability of finance to the self-builder. If the land is disposed to a community-led organisation, the Council will enter into an agreement to lease following the selection of the preferred community-led organisation by the assessment panel. Once planning permission has been granted, the Council will grant a head lease to the community-led

organisation. For single-unit self-build sites, the Council will enter into an agreement to lease following the selection of the preferred individual by the assessment panel. Once planning permission has been granted, the Council will grant a lease to the individual self-builder. In order to protect affordability in perpetuity, the Council will put in place appropriate restrictive covenants in the agreement to lease, the head lease and individual lease documents. Self-builders will also be required to incorporate these covenants into future leases and any rental agreements for the self-built homes.

Restrictive covenants will:

- restrict the permitted use of the land to the provision of community-led self-build housing;
- restrict the future sale or rent of the self-build homes by requiring a resale price cap to reflect any reduction in value of the land sold for self-build, equivalent to a proportion of the prevailing open market value relative to the initial discounted gross development value;
- contain a definition of community-led self-build, including the requirement that self-build homes must be occupied by individuals who are members of community-led groups and that future occupants live in the homes on the same basis and require community-led groups and individual self-builders to have in place clear allocation policies for the discounted sale or letting of self-build homes in line with agreed income brackets and caps.

These affordability covenants will be reinforced by a S106 agreement applied to the planning consent (example S106 clauses can be found in Appendix 6).

- 3.9 Once the panel confirms award of sites to preferred bidders and following Cabinet approval for the process outlined above, bidders will progress their schemes through the planning system including having pre-application meetings with Council officers. Once a planning application has been submitted, consultation will take place as set out in the Tower Hamlets Statement of Community Involvement. Once planning permission has been secured, any self-build project will need to be designed and built in accordance with the current Building Regulations and associated legislation. Self-Builders who are building on Council-owned land will be required to use the Council's Building Control team at each stage of the design and construction process.

### **Pigott Street and Smythe Street**

#### Marketing and assessment of bids

- 3.10 The same process described in 3.2-3.6 would apply to the next two sites in the programme (Pigott Street and Smythe Street). Site particulars will be prepared in line with those for Christian Street and Lark Row (Appendices 3a and 3b) and bidders will have access to the same pack of information on the GLA Small Sites Portal. An assessment panel will be assembled with a similar

composition of expertise, and scoring will be based on the same Assessment Criteria (Appendix 4).

#### Site disposal

- 3.11 It is proposed that the same process outlined in 3.7-3.9 is undertaken for Pigott Street and Smythe Street. Therefore, Cabinet is currently being asked to agree disposal of the sites to the bidders to be selected and confirmed as preferred by the panel, as the latter will have responsibility for ensuring that selected bids present the best offer in relation to the Self-Build Programme's strategic aims such as affordability of units, and that they have scored highest regarding the Assessment Criteria (Appendix 4). The same legal procedures outlined in 3.7-3.9 would also apply.

#### **Future sites for self-build**

- 3.12 This pioneering affordable self-build housing programme has so far attracted a considerable level of demand and interest from the local self-build community and from other Local Authorities considering ways to fulfil their statutory duties to meet the needs of self-build. Bids received for Christian Street and Lark Row demonstrated a commitment to meeting local housing needs and delivering wider benefits to communities including public open spaces and community rooms/hubs as part of the proposed schemes. Moreover, the knowledge exchange between the Community Led Housing Hub (London) and the Council, as well as assembling an expert panel to score the bids, is contributing to building capacity within the Council to support more self-build and community-led housing projects. In addition to helping to ensure that the Council complies with its duties under the Housing and Planning Act 2016 and the Self-build and Custom Housebuilding Act 2015, marketing more sites for self-build will also contribute to the Council's strategic priorities, specially Priority 1: People are aspirational, independent and have equal access to opportunities and Priority 2: A borough that our residents are proud of and love to live in, by supporting communities in playing a leading role to deliver the housing that they aspire to have.
- 3.13 The report approved as an Executive Decision by the Mayor at Cabinet on 25th March 2020 contained a list of eight sites under consideration for self-build. These were agreed to be included in the Self-Build Programme. Following an assessment conducted by officers from the Development Management Team, four of these sites were considered viable in planning terms – Christian Street, Lark Row, Pigott Street and Smythe Street –, whilst the other four - Land adjacent to 251-257 Brick Lane, 82 Mile End Road, Land behind Greaves Cottages and Dora Street - were considered challenging in planning terms due to them being too small and/or constrained. Officers will continue looking at the four sites that were considered challenging to assess whether they could be brought forward for self-build. Officers will also continue working with the Housing Regeneration and Capital Delivery Teams to identify other suitable sites for self-build.

- 3.14 Once new sites are identified, these will be brought to Cabinet for approval to be included in the programme. This current report proposes that the Corporate Director of Place is given delegated authority to undertake the same process that is proposed for Pigott Street and Smythe Street for any future sites that are added to the programme. In practice, this means that once sites are approved to be included in the Self-Build Programme by Cabinet, marketing and disposal will follow the procedures explained in 3.2-3.9.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 An Equality Analysis Quality Assurance Checklist (EAQAC) was undertaken for the Self-Build Policy and Guidance and did not identify any negative impacts across the nine plus one protected characteristics. A further Equalities Screening has been undertaken to account for the specific contents of this report and it can be found at Appendix 8.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This report seeks approval for the disposal and marketing of sites for self-build in compliance with the Right to Build requirement of the Housing and Planning Act 2016 in addition to the Self-Build Policy and Guidance adopted by the Council. The policy is state aid compliant and fulfils existing obligations in relation to best value and achieving best consideration in the disposal of Council-owned land.

#### **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 The report is seeking approval for the disposal of land at Christian Street and Lark Row to preferred bidders selected by assessment panel, on a 250-year lease for self-build homes in accordance with the previously approved Self-Build Policy and Guidance. The report is also seeking approval to market and dispose of land at Pigott Street and Smythe Street for the same purpose.
- 6.2 In relation to the disposal of Council owned land, the Council must demonstrate that it is seeking best value and achieving best consideration. As outlined in section 4 of the draft Self Build Policy, it is proposed that Council-owned land identified for disposal will be subject to a closed bidding process, with bids being evaluated against the criteria of: value for money, community benefit, deliverability, design innovation and energy efficiency with land being sold to the highest scoring bidder.
- 6.3 As a result the Council is seeking approval to dispose of these sites below market value. Independent valuations have taken place and the recommended offers do not represent the best financial consideration but are in compliance with the self-build policy and guidance previously approved.
- 6.4 However, the Local Government Act 1972 General Disposal Consent (England) 2003 permits disposals at less than best consideration where, the



disposal secures the promotion or improvement of the economic, social or environmental wellbeing of its area. This applies provided the undervalue does not exceed £2m. This consent is not, however, designed to override s123 but simply limit its effect. When disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. Independent valuations have determined the undervalue is less than the £2m threshold.

- 6.5 Appendix 4 and 5 of the self-build policy and guidance sets out the methodology for determining a percentage cap on future sales and rental levels, should the winning bid result in land being disposed of at lower than the market value. This would essentially be the difference between the value of the completed development, and the development costs (including the reduced offer for the land), expressed as a percentage. This methodology should be applied for these sites.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 This report correctly states that the Self-Build Policy and Guidance were approved by Cabinet in March 2020, along with a list of Council-owned sites to be disposed for affordable self-build.
- 7.2 Local authorities are given powers under the Local Government Act 1972, subject to applicable legal constraints, to dispose of land in any manner they wish, including granting a lease. However, a disposal must be for the best consideration reasonably obtainable, as set out in section 123 of the Local Government Act 1972 (except in the case of short tenancies), unless the Secretary of State consents to the disposal. This lease would not be classed as a short tenancy.
- 7.3 However, the Secretary of State has given a general consent in 2003 (Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003) to councils to dispose of land where that council considers that the purpose for which the land is to be disposed is likely to contribute to the promotion or improvement of the economic and / or social and / or environmental wellbeing of its area and residents. The second condition to this consent is that the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).
- 7.4 This report states that bids have been received which demonstrate a commitment to meeting local housing needs and delivering wider benefits to communities including public open spaces and community rooms/hubs as part of the proposed schemes (para 3.12). This is further supported by the Council including restrictions within the lease which in summary ensure that the use of the land is restricted to the provision of self-led community development, restriction of the future sale or rent of the self-build homes by requiring a resale price cap to reflect any reduction in value of the land sold for self-build, equivalent to a proportion of the prevailing open market value relative to the

initial discounted gross development value and a definition of community-led self-build, including the requirement that self-build homes must be occupied by individuals who are members of community-led groups.

- 7.5 In relation to the second condition, para 6.3 confirms that independent valuations have been determined the undervalue is less than the £2,000,000 threshold.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None

### **Appendices**

- Appendix 1 – Self Build Policy
- Appendix 2 – Self Build Guidance
- Appendix 3 – List of Proposed Self-Build Sites
- Appendix 3a – Christian Street Site Particulars
- Appendix 3b – Lark Row Site Particulars
- Appendix 4 – Assessment Criteria
- Appendix 5 – Guide to Bidders
- Appendix 6 – S106 Affordability in perpetuity example clauses
- Appendix 7 – Draft Lease
- Appendix 8 – Equality Impact Analysis Screening Tool

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- None

### **Officer contact details for documents:**

N/A